

or independent contractors. “Any agricultural employee” employed in the growing and harvesting of shade-grown tobacco will qualify for exemption if he engages in the specified processing operations. The use of the word “agricultural” before “employee” makes it apparent that separate consideration must be given to whether an employee is an “agricultural employee” and to whether he is employed in the specified “growing and harvesting” within the meaning of the Act.

**§ 780.511 Meaning of “agricultural employee.”**

An “agricultural employee,” for purposes of section 13(a)(14), may be defined as an employee employed in activities which are included in the definition of “agriculture” in section 3(f) of the Act (see § 780.103), and who is employed in these activities with sufficient regularity or continuity to characterize him as a person who engages in them as an occupation. Isolated or sporadic instances of engagement by an employee in activities defined as “agriculture” would not ordinarily establish that he is an “agricultural employee.” His engagement in agriculture should be sufficiently substantial to demonstrate some dedication to agricultural work as a means of livelihood.

**§ 780.512 “Employed in the growing and harvesting.”**

Section 13(a)(14) exempts processing operations on shade-grown tobacco only when performed by agricultural employees “employed in the growing and harvesting” of such tobacco. The use of the term “and” in the phrase “growing and harvesting” may be in recognition of the fact that in the raising of shade-grown tobacco the two operations are typically intermingled; however, it is not considered that the word “and” would preclude a determination on the particular facts that an employee is qualified for the exemption if he is employed only in “growing” or only in “harvesting.” Employment in work other than growing and harvesting of shade-grown tobacco will not satisfy the requirement that the employee be employed in growing and harvesting, even if such work is on shade-grown tobacco and constitutes

“agriculture” as defined in section 3(f) of the Act. For example, delivery of the tobacco by an employee of the farmer to the receiving platform of the bulking plant would be a “delivery to market” included in “agriculture” when performed by the farmer as an incident to or in conjunction with his farming operations (*Mitchell v. Budd*, 350 U.S. 473), but it would not be part of “growing and harvesting.”

**§ 780.513 What employment in growing and harvesting is sufficient.**

To qualify for exemption the employee must be one of those who “were employed in the growing and harvesting of such tobacco” (H. Rept. No. 75, 87th Cong., First Sess., p. 29) and one whose processing work could be viewed as a “continuation of the agricultural process, occurring in the vicinity where the tobacco was grown.” (Ibid. p. 26.) This appears to require that such employment be in connection with the crop of shade-grown tobacco which is being processed; it appears to preclude an employee who has had no such employment in the current crop season from qualifying for this exemption even if in some past season he was employed in growing and harvesting such tobacco. Bona fide employment in growing and harvesting shade-grown tobacco would also appear to be necessary. An attempt to qualify an employee for the processing exemption by sending him to the fields for growing or harvesting work for a few hours or days would not establish the bona fide employment in growing and harvesting contemplated by the Act. It would not seem sufficient that an employee has been engaged in growing or harvesting operations only occasionally or casually or incidentally for a small fraction of his work time. (See *Walling v. Haden*, 153 F. 2d 196.) Employment for a significant period in the current crop season or on some regular recurring basis during this season would appear to be necessary before an agricultural employee could reasonably be described as one “employed in the growing and harvesting of shade-grown tobacco.” The determination in a doubtful case will, therefore, require a careful examination and consideration of the particular facts.